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14 UNITED STATES DISTRICT COURT  
15 DISTRICT OF NEVADA

16 ANAT SAPAN and FALKO HOERNICKE,  
17 Individually and On Behalf of themselves and  
All Others similarly Situated,

18 Plaintiffs,

19 v.

20 LIBERATOR MEDICAL HOLDINGS, INC.;  
21 MARK LIBRATORE; JEANNETTE  
CORBETTE; TYLER WICK; RUBEN JOSE  
22 KING-SHAW, JR; PHILIP SPRINKLE; C.R.  
BARD, INC.; FREEDOM MERGERSUB, INC.,

23 Defendants.

Case No.: 2:15-cv-02484-APG-CWH

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**STIPULATED CONFIDENTIALITY**  
**AGREEMENT AND PROTECTIVE**  
**ORDER**

Pursuant to Rule 26(c), Federal Rules of Civil Procedure, the undersigned parties stipulate to, and jointly move the Court to enter, a Stipulated Confidentiality Agreement and Protective Order governing the exchange and use of certain confidential documents and information in this case. The parties agree that entry of a Stipulated Confidentiality Agreement and Protective Order is necessary to preserve the confidentiality of certain confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this action would be warranted. The unrestricted disclosure of such information would cause undue damage to the parties and their businesses. Accordingly, the parties respectfully request that the Court enter the proposed Stipulated Confidentiality Agreement and Protective Order.

Pursuant to the Stipulation contained herein by and among the Parties, it is hereby ORDERED that, pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502, the following provisions shall govern confidentiality as follows:

1. The following definitions apply to terms used in this Stipulated Confidentiality Agreement and Protective Order (the “Order”).

(a) “Litigation” means *Anat Sapan v. Liberator Medical Holdings, Inc.*, Case No. 2:15-cv-02484-APG-CWH (D. Nev.).

(b) “Documents” or “Information” mean and include any documents (whether in hard copy or electronic form), records, correspondence, analyses, assessments, statements (financial or otherwise), responses to discovery, tangible articles or things, materials, testimony, whether documentary or oral, and other information provided, served, disclosed, filed, or produced, whether voluntarily or through discovery or other means, in connection with this Litigation. A draft or non-identical copy is a separate document within the meaning of these terms.

(c) “Producing Party” means any person or entity who provides, serves, discloses, files, or produces any Documents or Information in this Litigation.

(d) “Receiving Party” shall mean any Party who receives any such Documents or Information.

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1 (e) The Parties agree that, in conjunction with the discovery proceedings in this  
2 Litigation, a Party in the Litigation or the Producing Party may, in good faith, designate Documents  
3 and Information as “Confidential Information” under the terms of this Order. Confidential  
4 Information shall not be provided or made available except as permitted by, and in accordance with,  
5 the provisions of this Order. Confidential Information is information that contains trade secret,  
6 proprietary, and/or sensitive business or personal information or other legally protected information.

7 2. Confidential Information may not be used for any purpose other than the prosecution  
8 or defense of this Litigation.

9 3. Documents and Information deemed to be Confidential Information may be  
10 designated and marked as either “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES  
11 ONLY.” Confidential Information related to proprietary, trade secret, confidential research,  
12 development, business, financial or commercial information may be designated as  
13 “CONFIDENTIAL/ATTORNEYS’ EYES ONLY.” Other Confidential Information may be  
14 designated as “CONFIDENTIAL.” A Party in the Litigation or the Producing Party may designate  
15 Documents or Information as “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES  
16 ONLY” within thirty (30) days after the production or receipt of such Documents or Information.  
17 Any objection to a designation of “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES  
18 ONLY” of all or any portion of a Document or Information will be handled under Paragraph 11  
19 below.

20 4. Documents or Information designated “CONFIDENTIAL” shall be shown only to the  
21 following persons:

22 (i) this Court and any appellate court reviewing a decision from this  
23 Litigation, including court personnel, jurors and alternate jurors, following the procedures of  
24 Paragraph 12 below;

25 (ii) attorneys of record to the Parties of this Litigation (including their  
26 associates, legal assistants, secretaries, and other office employees);

27 (iii) court reporters as required in the course of a deposition or court  
28 proceeding in this Litigation;

(iv) outside vendors or service providers retained by attorneys of record to the Parties of this Litigation, such as copy service providers;

(v) the Parties to this Litigation;

(vi) any person called or to be called as a witness at a deposition, hearing or the trial in this Litigation;

(vii) any non-Parties who either authored, or received the Confidential Information in the normal course of business;

(viii) experts (including their secretaries and other office employees), advisors or consultants retained by counsel to any Party in this Litigation; or

(ix) the insurer for any Party and its attorneys (including secretaries and other office employees).

5. Documents designated “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” shall be shown only to the following persons:

(i) this Court and any appellate court reviewing a decision from this Litigation, including court personnel, jurors and alternate jurors, following the procedures of Paragraph 12 below;

(ii) outside counsel to the Parties of this Litigation (including their associates, legal assistants, secretaries, and other office employees);

(iii) court reporters as required in the course of a deposition or court proceeding in this Litigation;

(iv) copy service providers retained by attorneys of record to the Parties of this Litigation;

(v) the Producing Party that produced the specific “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” document in this Litigation; or

(vi) experts (including their secretaries and other office employees), advisors, or consultants retained by counsel to any Party in this Litigation.

...

1           6. Before Confidential Information is disclosed to any person or entity under Paragraphs  
2 4(vi), 4(vii), 4(viii), or 5(vi) of this Order, each such person or entity shall be given a copy of this  
3 Order and shall execute a copy of the form attached hereto as Exhibit A (“Confidentiality  
4 Agreement”). The Confidentiality Agreement shall be retained by the Party disclosing Confidential  
5 Information to such person. Confidential Information may be disclosed only to the extent  
6 reasonably necessary to enable the person or entity to assist in the prosecution or defense of this  
7 Litigation.

8           7. Any person or entity covered by this Order hereby agrees to the restrictions imposed  
9 by this Order and to submit his or her person to the jurisdiction of the above-titled Court for the  
10 limited purpose of securing compliance with the terms of this Order.

11           8. Any Party designating any person or entity as one who shall receive and review  
12 Confidential Information under Paragraphs 4(vi), 4(vii), 4(viii), or 5(vi) of this Order shall use  
13 reasonable care and precaution to insure that each such person or entity observes the terms of this  
14 Order.

15           9. Counsel for any Party, person, or entity who obtains or gains access to Confidential  
16 Information, whether directly or indirectly, by viewing the materials or by learning of their contents  
17 by oral disclosure or any other means, shall maintain, possess, and control such Confidential  
18 Information in a manner such that it is not accessible to individuals or entities not bound by this  
19 Order. Such counsel shall not, in any way, directly or indirectly communicate such Confidential  
20 Information to persons or entities not authorized to have access to such Confidential Information.

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1           10.     At the time of a deposition in this matter or thirty (30) days thereafter, a Party may  
2 designate as “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” specific  
3 portions of the testimony which contain Confidential Information. If a witness is providing or is  
4 provided Confidential Information during a deposition, counsel for a Party or the Producing Party  
5 may request that all persons other than the witness and persons entitled by this Order to have access  
6 to the Confidential Information leave the deposition room during that portion of the deposition.  
7 Failure of any person to comply with such a request will constitute sufficient justification from the  
8 witness to refuse to answer the question, or for a Party or the Producing Party to demand that  
9 Confidential Information not be provided to the witness, pending resolution of the issue. Any  
10 portions of a transcript designated “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES  
11 ONLY” shall be separately bound, endorsed “CONFIDENTIAL” or  
12 “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” and treated as a confidential document in  
13 accordance with this Order.

14           11.     If a Party believes that a document or transcript designated or sought to be designated  
15 “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” by the Producing Party  
16 does not warrant such designation, it shall serve written notice on the Producing Party of its  
17 objection to such confidential designation. The written notice shall identify the Confidential  
18 Information and the basis upon which the objection is made. The Parties shall make a good faith  
19 effort to resolve such dispute without Court intervention. In the event that such a dispute cannot be  
20 resolved by the Parties within fourteen (14) days after the time the notice is received, the Party  
21 challenging the designation may make application with the Court challenging the designation. The  
22 document or transcript will be treated as Confidential Information as designated by the Producing  
23 Party until ruled upon by the Court. The burden rests upon the Party seeking confidentiality to  
24 demonstrate that such designation is proper.

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1           12. In the event a Party wishes to file a document, transcript or thing containing  
2 Confidential Information with the Court or to use such information in a hearing, trial, or other  
3 appearance before the Court, for any purpose, the Parties agree to follow the applicable court rules  
4 and, to the extent necessary, file the Confidential Information with the Court under seal, in  
5 accordance with the Court's provisions. Any confidential materials that are filed with the Court, and  
6 any pleading, motion, or other paper filed with the Court containing or disclosing any such  
7 confidential material shall be filed under seal and shall bear the legend:

8           **THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION/MATERIAL**  
9           **COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED**  
10           **UNDER SEAL PURSUANT TO THAT PROTECTIVE ORDER. THE**  
11           **CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED**  
12           **WITHOUT THE EXPRESS ORDER OF THE COURT.**

13 Any document submitted to the Court utilizing this procedure shall thereby become a part of the  
14 record. In the event that the Court does not permit the filing under seal of the materials designated  
15 as containing Confidential Information, and the materials are publicly filed, the Party designating the  
16 materials as Confidential Information reserves its right to continue to assert that the materials are  
17 Confidential Information elsewhere.

18           13. In filing materials with the Court in pretrial proceedings, counsel shall, with the  
19 permission of the Court, file under seal only those specific documents and deposition testimony  
20 designated "CONFIDENTIAL" or "CONFIDENTIAL/ATTORNEYS' EYES ONLY" and only  
21 those specific portions of briefs, applications, and other filings which contain verbatim  
22 "CONFIDENTIAL" or "CONFIDENTIAL/ATTORNEYS' EYES ONLY" data or which set forth  
23 the substance of such "CONFIDENTIAL" or "CONFIDENTIAL/ATTORNEYS' EYES ONLY"  
24 information.

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14. All information that was produced or provided by any Party to an opposing Party prior to the entry of this Order, which is designated as Confidential Information within thirty (30) days of the entry of this Order, is subject to the terms and conditions of this Order. Disclosure of such Confidential Information prior to such designation, if known, shall be reported to the Party or Producing Party designating the information “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” immediately following such designation.

15. In the event that any Party receives a request, or is required (by deposition, interrogatory, request for production of documents or things, subpoena, civil investigative demand, or similar process) to disclose all or any part of information which is designated as Confidential Information (the “Request”), such Party shall (a) notify all Parties to this Litigation of the existence, terms, and circumstances of the Request within five (5) business days, (b) forward a copy of the Request to counsel for the Producing Party whose Confidential Information is sought, and (c) as permitted by applicable rule, object to production on the basis of this Protective Order. No disclosure of the Confidential Information is permitted by the Party who received the Request without final order from the Court, after notice, requiring such disclosure, provided, however, that the Producing Party shall have the burden and responsibility of moving for appropriate relief and/or opposing any motion or other request for the production of Confidential Information.

16. This order shall be binding upon any future Parties to this Litigation, and when a copy is provided to the same, upon any non-Party witness subpoenaed to produce documents and/or testify in this Litigation.

17. Nothing herein shall prevent any Party to this Litigation from making application to the Court for a protective order before or at trial.

18. This Order shall survive any settlement, judgment, or other disposition or conclusion of this Litigation and all appeals therefrom and this Court shall retain continuing jurisdiction in order to enforce the terms of this Order.

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1           Within sixty (60) days after the final termination of this Litigation, whether by final  
2 judgment, or settlement, including the expiration of time for any appeal, counsel for each Receiving  
3 Party shall return all “Confidential” documents it has received to counsel for the Producing Party or,  
4 upon written request by the Producing Party, shall destroy all such information and certify to counsel  
5 for the Producing Party that such destruction has occurred. However, counsel for the Receiving  
6 Party may retain:

7                   (a)     any attorney work product; and  
8                   (b)     copies of any pleadings, motions, briefs, declarations, affidavits, and  
9 deposition transcripts that contain, attach, or append documents designated confidential, but only to  
10 the extent necessary to preserve a file with respect to this lawsuit. Any retained information shall  
11 continue to be treated as Confidential Information pursuant to the terms of this Order.

12           19.     Nothing in this Order shall prevent a Party or non-Party who has designated  
13 information as Confidential Information from agreeing to release any of the Confidential  
14 Information from the requirements of this Order.

15           20.     This Order has no effect upon, and its scope shall not extend to, any Party or non-  
16 Party’s use of its own Confidential Information nor shall counsel for either Party be precluded from  
17 showing or using Confidential Information obtained from the opposing Party during examination, at  
18 deposition or trial or other Court proceeding, of any officer, employee, or retained expert of the  
19 Party who designated the information confidential; provided, however, that in the case of trial or  
20 other Court proceeding the Party who wishes to use such information shall follow the procedures of  
21 Paragraph 12 hereof and any ruling from the Court regarding the use of such information.

22           21.     Nothing in this Order shall prevent the Parties from agreeing to amend this Order, or  
23 prevent any Party from moving for an amendment of this Order, either during or after the conclusion  
24 of this Litigation, or shall prejudice in any way the rights of a Party to apply to the Court for any  
25 additional protection with respect to the confidentiality of documents or information as that Party  
26 may consider appropriate. This Stipulation shall constitute a binding agreement between the Parties  
27 prior to and without regard to whether it is ultimately entered by the Court.  
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22. The inadvertent, unintentional, or *in camera* disclosure of Confidential Information or documents marked as “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” shall not be deemed a waiver, in whole or in part, of the Producing Party’s claims of confidentiality as to the documents. The failure of any Party hereto to enforce at any time any provision of this Order shall not be construed as a waiver of such provision, nor be construed to affect the validity of this Order or the right of any Party thereafter to enforce each and every provision of this Order. No waiver of any breach of this Order shall be held to constitute a waiver of any other breach. The inadvertent failure to mark a document “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” may be corrected at any time by supplemental written notice to the Party to whom the Confidential Information has been produced that such document or information is confidential and subject to the terms of this Order.

23. The inadvertent or unintentional disclosure or production of any privileged information or document by any Party shall not constitute a waiver or impairment of any claim of privilege (including the attorney-client privilege or work product doctrine) concerning any such information or documents or the subject matter thereof. If privileged information or documents are inadvertently or unintentionally disclosed or produced, the privileged materials, together with all copies, shall be returned to the Producing Party as soon as practicable after demand from the Producing Party.

24. Nothing contained in this Order and no action taken pursuant to this Order shall prejudice the right of any Party to contest the alleged relevance, admissibility, or discoverability of documents marked “CONFIDENTIAL” or “CONFIDENTIAL/ATTORNEYS’ EYES ONLY” or containing Confidential Information.

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DATED this 29th day of July, 2016.

**MUEHLBAUER LAW OFFICE, LTD.**

/s/Andrew Muehlbauer, Esq.(with permission)

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DATED this 29th day of July, 2016.

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Inc., Mark Libratore, Jeannette Corbett, Tyler Wick,  
Ruben Jose King-Shaw, Jr. and Philip Sprinkle*

1 DATED this 29th day of July, 2016.

2 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

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21 *Attorneys for Defendants C.R. Bard, Inc.*

22 *and Freedom MergerSub, Inc.*

23 **ORDER**

24 **IT IS SO ORDERED.**

25   
UNITED STATES MAGISTRATE JUDGE

26 August 1, 2016

27 **DATED**

AKERMAN LLP

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**EXHIBIT A**

I, \_\_\_\_\_, hereby acknowledge that: (a) I have read the foregoing Stipulated Confidentiality Agreement and Protective Order (the “Order”) which I am informed has been entered in the Litigation presently styled *Anat Sapan v. Liberator Medical Holdings, Inc.*, Case No. 2:15-cv-02484-APG-CWH (D. Nev.); (b) I understand the terms of the Order; (c) I agree, upon threat of penalty of contempt and other civil remedies, to be bound by such terms; and (d) I irrevocably submit my person to the jurisdiction of the above-entitled Court for the purpose of securing compliance with the terms and conditions of the Order.

DATE

SIGNATURE

\_\_\_\_\_  
PRINTED NAME

**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 29th day of July, 2016, I served via CM/ECF electronic filing system, and/or deposited for mailing in the U.S. Mail postage prepaid, a true and correct copy of the foregoing **STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER** addressed as follows:

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/s/ Allen G. Stephens  
 An Employee of AKERMAN LLP